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Oceans and the law of the sea

Letter dated 16 October 1998 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General

On behalf of the delegations of Algeria, Angola, Argentina, Austria, Bahamas, Belgium, Brazil, Bulgaria, Canada, Cape Verde, China, Costa Rica, Cyprus, Fiji, Finland, Germany, Greece, Guinea-Bissau, Guyana, India, Italy, Jamaica, Japan, Luxembourg, Malaysia, Malta, Mexico, Monaco, Morocco, Mozambique, the Netherlands, New Zealand, the Russian Federation, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Singapore, South Africa, Spain, Uruguay and my own delegation, I have the honour to transmit to you herewith an information note on the results of the work of the Independent World Commission on the Oceans.

Co-sponsors do not necessarily agree with all the recommendations made by the Commission, but certainly believe that they constitute a valuable contribution to the debate on the oceans.

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly under agenda item 38.

(*Signed*) António **Monteiro**
Ambassador
Permanent Representative

* Reissued for technical reasons

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Annex

Note on the results of the work of the Independent World Commission on the Oceans

1. Under the leadership of Mário Soares, then President of Portugal, the Independent World Commission on the Oceans was launched in December 1995 with the task of looking holistically at the complex, multifaceted problems of the oceans. The Commission's purpose has been, above all, to alert the public and world leaders to the role of the oceans in planetary survival, to the threats facing the oceans and to their more peaceful and sustainable use. It has explored ideas for strengthening the legal and institutional framework for ocean governance at the national, regional and global levels. The Commission has recently completed its work.

2. At its concluding session, held in Lisbon from 31 August to 2 September 1998, at EXPO '98 dedicated to the theme of the oceans, the Commission presented to representatives of the international community and, in particular, to young people its report entitled *The Ocean ... Our Future*, aimed at promoting global awareness of the need to govern the oceans in the interest of humankind.

3. On the occasion of the General Assembly's consideration of the agenda item on the International Year of the Ocean, in 1998, the Commission submits herewith a summary of its main findings in the hope of contributing to deeper intergovernmental and governmental consideration of ocean affairs.

Growing attention to the oceans

4. As the millennium draws to a close, the fate of the oceans has become the subject of growing international interest. No longer are they taken for granted as a source of wealth, opportunity and abundance. Instead more and more people are starting to appreciate not only the importance of the oceans to social and economic progress but also their vulnerability to the consequences of human activities. The realization that abundance has given way to scarcity and conflict has led to an appreciation of the need to change our behaviour towards the oceans, at both the government level and society at large. The following developments are illustrative of this growing awareness:

(a) Non-governmental organizations have become involved in ocean affairs at all political levels, thereby heightening awareness of the need for change;

(b) The international legal foundation for the promotion of greater order and equity in the oceans has been laid, notably through the United Nations Convention on the Law of the Sea;

(c) In chapter 17 of Agenda 21, the United Nations programme of action for sustainable development, Governments committed themselves to a set of actions based on new approaches for pursuing the protection and sustainable development of the marine and coastal environment and its resources;

(d) As people are realizing that what they do on land affects what happens at sea, interest in integrated coastal zone management and in international initiatives for integrated watershed management has grown;

(e) Application of the marine ecosystem concept and of the precautionary principle to the management of living resources has spread from the regional to the global level, as is exemplified by the 1995 Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks;

(f) Politically, Governments have begun to incorporate the linkages between the oceans, biodiversity, rivers, transport of hazardous wastes, climate change and other issues into regional arrangements, of which a notable example is the Mediterranean;

(g) Operationally, the restructured Global Environment Facility, a semi-autonomous funding mechanism, has begun to develop an integrated international waters programme for marine and freshwater resources;

(h) Efforts are being made to organize the information Governments need for analysing and resolving ocean problems, as in the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities.

5. Laudable as these achievements may be, they fall short of what is needed for meeting the challenges and opportunities posed by the oceans in the twenty-first century. Standing in the way of further progress are a number of difficulties confronting the international community. They relate chiefly to imperfect perceptions of the issues and insufficient legal and institutional capacity to translate understanding, where it does exist, into decisive action.

6. At the level of **perceptions**, decision makers and the general public are hampered by the complexity of the issues and sometimes by inadequate knowledge of the oceans, by competing uses and conflicting interests over their use, by ideological differences over what should be the proper role of ocean regulation, and by psychological barriers to changing individual behaviour.

7. Concerning **laws and institutions**, legal instruments for the management of the oceans that followed the adoption in 1982 of the United Nations Convention on the Law of the Sea have not resulted in a coherent, responsive framework for ocean governance. Separate, sectoral mandates have multiplied across different international institutions and overwhelmed the weak mechanisms for coordination and joint programming. The structure of international ocean law and institutions essentially mirrors the weak, piecemeal structures that exist nationally. Although the present institutional framework is less than adequate for responding fully to the new requirements, the progress that has been made sets the stage for the next steps that need to be taken.

Future direction

8. Building upon the advances already made, the Commission has made a number of recommendations aimed at encouraging the more sustainable use of the oceans and their resources. There are three major objectives underlying these recommendations: to bring about greater security and equity for humankind; to improve the contribution of science and technology to the preservation and use of ocean resources; and to strengthen ocean governance systems and ensure public participation in their management.

Security and equity

9. The end of the cold war has fundamentally altered the context in which the quest for peace and security in the oceans is evolving. The most important and most welcome change arising from the removal of East-West tensions is the diminished likelihood that nations will become embroiled in a global conflagration. Thus, naval forces no longer have the same role to play as they did in the past. Therefore, it is time, in the view of the Commission, to look beyond the traditional concept of security of nations and think creatively about how naval forces can contribute more directly to upholding the security of people. It is in mitigating the new threats to the individual – illegal fishing, seaborne drug trafficking, arms smuggling, clandestine transport of persons and piracy – that navies and, where appropriate, other maritime security forces may now have the greatest contribution to make towards safeguarding the oceans for peaceful uses.

10. Ensuring the security of individuals also implies the reduction of gross disparities in standards of living between them, including those emanating from the maldistribution of benefits from the use of the oceans. Security cannot prevail without equity. The Commission has consequently identified several areas in which positive action would contribute significantly to achieving equity in the oceans, including several measures that, although already endorsed by various forums, have yet to be implemented. Such action should pay particular attention to vulnerable groups, especially indigenous peoples and local communities dependent for their livelihoods on the sea. Moreover, greater emphasis should be placed on improving the access of developing countries to oceanographic data, acquisition of marine technologies and related know-how essential for sustainably managing their maritime areas, including their exclusive economic zones. The Commission draws attention to the importance, *inter alia*, of initiatives to levy charges on the use of the oceans as a means of generating development finance.

Science, technology and resource use

11. Science and technology directly affect our ability to deal with the many challenges facing the oceans. There is a great need for the active participation of scientists and engineers in decision-making in ocean affairs through a more constructive dialogue between them, political leaders and the general public. Recognizing the contributions as well as the risks inherent in the deployment of technology, the Commission urges that a more systematic effort be made to subject technologies to a prior assessment of their environmental and social impacts. The application of the precautionary principle called for in Agenda 21 should become the general rule in ocean management. The Commission is also of the view that in order to secure the sustainable development of our marine resources we need to reconsider how we value the oceans, in particular by introducing explicitly into systems of national income accounting their intrinsic and ecological value. Accordingly, ocean management should take into account all internal and external effects by ensuring that users of ocean resources and disrupters of marine ecosystems bear the true costs of their actions.

Governance and public participation

12. The Commission firmly believes that the only way to meet the overarching challenge of developing systems of

ocean governance that promote peace, security, equity and sustainable development is by making decision-making more democratic. Ocean governance must be based on more coherent and responsive policies and programmes for the oceans, including the coastal zone, the critical interface between people and the sea.

13. Existing conventions provide an adequate foundation for more effective ocean governance on the condition that the "political will" to ensure full compliance with ocean law and the adoption of effective enforcement measures can be mustered. Moreover, institutions have been developed over time to address most of the problems that have emerged, but may not be adequate to respond to the challenges of our time.

14. The Commission believes that an important first step towards more effective governance is a revisiting of the institutional structure. Action such as the following should be taken at the appropriate level:

(a) Nationally, it is important for all countries to consider establishing an appropriate policy and coordinating mechanism at a high enough level in the government to set and review goals for the oceans within an integrated approach to marine policy;

(b) Regionally, better use should be made of the organizations and programmes that already exist for the sustainable management of marine and coastal areas, including mechanisms for the settlement of disputes and for the upward harmonization of standards;

(c) Globally, the ongoing review of ocean affairs within the General Assembly should be strengthened. There is a clear need for an integrated and in-depth consideration, on a regular basis, of law of the sea and ocean affairs issues, including related conventions and programmes such as on biodiversity and climate change, as well as Agenda 21.

15. The world's oceans are not just the domain of Governments and international organizations. They are also the legitimate concern of every human being. All those who have an interest or stake in the future of the oceans are natural and necessary participants in formulating policies and in seeing that they are implemented. Participatory approaches offer the best way to generate the openness and climate of understanding that render such measures politically acceptable. Enlightened, and motivated participation by citizens requires both information and enlarged possibilities for such participation.

16. Apart from the intergovernmental machinery itself, the Commission is convinced that civil society should be endowed with its own means of independently monitoring the ongoing developments in ocean affairs, thereby making the present system of ocean governance more coherent, transparent and responsive. The establishment of a non-governmental focal point or "observatory" for collecting and exchanging ocean-related information from all sources would increase the transparency of the existing system of ocean governance and at the same time make it more democratic. Such an observatory should invite the widest possible participation and provide the opportunity for all interested citizens to obtain and exchange information on ocean issues that are of concern to them. The information gathered would be used by the observatory to produce periodic "state of the oceans" reports as well as ad hoc studies of urgent ocean issues. As a further step towards greater democracy and participation, such reports could then form the basis for convening in an open forum – outside the governmental system – ocean users and stakeholders to enable them to publicly assess and express their views on given ocean issues.

17. The adoption of such approaches, which have been recommended by the Commission, would enable those with an interest in the oceans – and in their many interactions with land-based activities, rivers and coastal areas – to better articulate their concerns and express their hopes and aspirations. New voices would be empowered to speak up for the oceans on behalf of humankind. The Commission's proposals seek to establish a system for the use of the oceans and their resources based on the value of human individuals, be it of our contemporaries or of generations to come – a democratic system implying global awareness of what is at stake and the active participation of civil society as a whole in their successful management.

18. It is the hope of the Commission that these considerations will contribute positively to the Assembly's discussion of ocean affairs.